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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,863

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Kevin R. Stone

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EXAMINER

GHERBI, SUZETTE JAIME J

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

01/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/517,863	Applicant(s) STONE, KEVIN R.	
	Examiner SUZETTE J. GHERBI	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 28, 30, 33-35, 39-42, 47 and 56-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28 and 57-62 is/are allowed.
- 6) ☒ Claim(s) 15, 30, 33-35, 39-42, 47, 56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicants amendment dated 9/18/08 has been received in application serial number 10/517,863. All comments have been taken into consideration. Claims 1-14, 16-27, 29, 31-32, 36-38, 43-46, 48-55, and 63-87 have been canceled.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Upon further search and consideration this Office Action has been made non-final in order to further address previously submitted claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims **30, 35, 39-42** are rejected under 35 U.S.C. 102(e) as being anticipated by Stone 5,007,934

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Stone discloses the invention as claimed including that the device is adapted to have an in vivo outer surface contour substantially the same as that of natural articular cartilage (see 3:5-8); wherein the device matrix has a density of about 0.07 to 0.50 gram matrix per cubic centimeter; or 0.10-0.25gm matrix per cubic centimeter; wherein there is an intrafibrillary and interfibrillary space of about 2 to 25 cubic centimeters per gram matrix material (see 6:52-63); wherein a matrix material comprises glycosaminoglycan (GAG) molecules (see 6:26-35).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim **15** is rejected under 35 U.S.C. 103(a) as being unpatentable over 5,007,934 in view of 4,880,429. Patent '934 discloses all of the component of the claim except an absorbable scaffold adapted for the ingrowth of fibrochondrocytes. Patent '4,880,429 teaches this limitation and noting claim 1:

“...whereby said matrix establishes an at least partially bioresorbable scaffold adapted for ingrowth of meniscal fibrochondrocytes”

Thus, it would have been obvious to one having skill in the art to apply such a scaffold to the devices of '934 because it is well known that fibrochondrocytes have the ability to migrate into a defect filled with a fibrin clot and form tissue apparently similar to normal meniscal fibrocartilage.

Claim **33** is rejected under 35 U.S.C. 103(a) as being unpatentable over Stone 5,007,934 in view of Stone 5,263,984. Patent '934 has been disclosed supra however does not disclose the use of polysaccharides. Patent 5,263,984 teaches the use of polysaccharides. It would have been obvious to one having skill in the art to utilize the polysaccharides with the patent of '934 in order to provide lubrication, hydrophilicity, and strength to the device.

Claim **47** is rejected under 35 U.S.C. 103(a) as being unpatentable over Stone 5,007,934 which disclose the use in vivo in view of Stone 5,944,755. Patent '934 has

Art Unit: 3738

been disclosed supra however does not mention the use of polyethylene-glycol treatment (see 11:25-34). It would have been obvious to one having skill in the art to utilize polyethylene-glycol for the use of an embedding medium.

Claim **56** is rejected under 35 U.S.C. 103(a) as being unpatentable over 5,007,934 in view of Stone 4,880,429. Patent '934 has been disclosed supra however does not disclose an absorbable mesh surrounding the device. Patent '429 teaches such a mesh. It would have been obvious to one having skill in the art to utilize an absorbable mesh as taught by '429 with the device of '934 as a means of anchoring the device in place.

Allowable Subject Matter

Claims **28 and 57-62** are allowed

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J-J Gherbi whose work schedule is Maxi-Flex off every other Friday and whose telephone number is 571-272-4751.

Art Unit: 3738

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Suzette J Gherbi/
Primary Examiner, Art Unit 3738
22 January 2009